



NEWS

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(415) 865-7740
Lynn Holton, Public Information Officer

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SUMMARY OF CASES ACCEPTED DURING THE WEEK OF JUNE 10, 2002

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#02-92 People v. Arnold, S106444. (C037898; unpublished opinion.) Petition for review after the Court of Appeal reversed a judgment entered on revocation of probation in a criminal action.

#02-93 People v. Jeffrey, S105978. (A095147; unpublished opinion.) Petition for review after the Court of Appeal affirmed a judgment entered on revocation of probation in a criminal action.

Arnold and Jeffrey present the following issue: Does a defendant's waiver of Penal Code section 2900.5 custody credits at the time probation is imposed apply to a future term of imprisonment in the event probation is revoked?

#02-94 Bonnell v. Medical Board, S105798. (C038019; 96 Cal.App.4th 654.) Petition for review after the Court of Appeal reversed the judgment in a proceeding for writ of administrative mandate. This case presents the following issue: Does Government Code section 11521, subdivision (a), as amended in 1987, authorize an administrative agency to issue a stay of up to 30 days for the purpose of evaluating a petition for reconsideration that has already been filed, or does the statute limit such stays to a period no greater than 10 days?

#02-95 Claxton v. Waters, S106106. (B141129; unpublished opinion.) Petition for review after the Court of Appeal reversed summary judgment in a civil action. This case presents the following issue: Does the form compromise and release agreement that plaintiff executed in her worker's compensation claim for injuries arising from sexual harassment operate to bar plaintiff's civil action for discrimination under the California Fair Employment and Housing Act?

#02-96 Estate of Ford, S105508. (A094755; 96 Cal.App.4th 386, mod. 97 Cal.App.4th 108a.) Petition for review after the Court of Appeal affirmed an order in a probate proceeding. This case presents the following issue: What are the requirements and standard of proof for establishing a claim of equitable adoption?

#02-97 Kahn v. East Side Union High School Dist., S105735. (H021239; 96 Cal.App.4th 781.) Petition for review after the Court of Appeal affirmed the summary judgment in a civil action. This case presents the following issue: Does the doctrine of primary assumption of risk bar recovery against a school district and its swim team coaches by a 14-year-old student who was injured after diving into a shallow racing pool during a swim meet, when a factual dispute exists as to whether the student had received instruction on diving into a shallow pool prior to being required to make such a dive?

#02-98 Mejia v. Reed, S106586. (H020771; 97 Cal.App.4th 277, mod. 97 Cal.App.4th 1269e.) Petition for review after the Court of Appeal reversed the summary judgment in a civil action. This case presents the following issues: (1) May an interspousal transfer pursuant to a marital settlement agreement and dissolution judgment be set aside under the Uniform Fraudulent Transfer Act (Civ. Code, § 3439 et seq.), or is such a remedy precluded by operation of Family Code section 916, subdivision (a)(2), which in relevant part provides that property received by one spouse in the division of community property is not liable to a debt incurred by the other spouse before or during the marriage? (2) If the Uniform Fraudulent Transfer Act does apply to property transfers incident to a marital dissolution judgment, did the Court of Appeal err in concluding that a stream of future child support payments, discounted to present value, could support a finding that the debtor was rendered insolvent by the transfer, for purposes of establishing a fraudulent transfer?

#02-99 People v. Montes, S105781. (C036904; 96 Cal.App.4th 518.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense. This case presents the following issue: When a defendant is found to have committed a crime for the benefit of a criminal street gang within the meaning of Penal Code section 186.22, subdivision (b), and the substantive offense itself is punishable only by a determinate term, but the defendant receives an enhancement of 25 years to life under Penal Code section 12022.53, subdivision (d), for the personal and intentional discharge of a firearm proximately causing death or great bodily injury to any person other than an accomplice, is the defendant subject to the minimum parole term provisions of section 186.22, subdivision (b)(5) (which apply to a violation of section 186.22, subdivision (b), while “in the commission of a felony punishable by imprisonment in the state prison for life”) or is the defendant subject to an enhancement of a specified term under section 186.22, subdivision (b)(1)?

#02-100 People v. Neal, S106440. (F036055; unpublished opinion.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Did defendant knowingly and voluntarily waive his *Miranda* rights (*Miranda v. Arizona* (1966) 384 U.S. 436), prior to confessing when the officer who obtained the waiver and confession had deliberately and repeatedly violated *Miranda* in an earlier interrogation by continuing to question defendant despite his invocations of the right to counsel so as to obtain impeachment material?

#02-101 People v. Seel, S106273. (B143771; unpublished opinion.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of a criminal offense. This case includes the following issue: When defendant’s attempted murder conviction is affirmed but the premeditation finding under Penal Code section 664, subdivision (a), is reversed for insufficient evidence, is retrial of the sentencing allegation barred by the double jeopardy provisions of the federal and state Constitutions?

#02-102 Teter v. City of Newport Beach, S106553. (G025239; unpublished opinion.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Is a person who is detained in a city jail

following arrest for public intoxication pursuant to Penal Code section 647, subdivision (f), a “prisoner” or in “civil protective custody” for purposes of governmental tort immunity under Government Code section 844.6?

#02-103 People v. Black, S106428. (F033914, F038143; 96 Cal.App.4th 1389.) Petition for review after the Court of Appeal remanded a judgment of conviction of criminal offenses for a new hearing on defendant’s motion to suppress and denied a petition for a writ of habeas corpus.

#02-104 People v. Henke, S106477. (G025118; unpublished opinion.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense.

The court ordered briefing deferred in Black and Henke pending decision in People v. Sanders, S094088 (#01-21), which presents the following issues: (1) Should this court reconsider the holding in *In re Tyrell J.* (1994) 8 Cal.4th 68, 74, that the otherwise illegal search of a minor who is subject to a probation search condition is “not unconstitutional despite the officer’s ignorance of the search condition”? (2) If the court’s holding in *In re Tyrell J.* remains viable, should that holding apply to adult parolees who are subject to search conditions? (3) Under *People v. Robles* (2000) 23 Cal.4th 789, does the admissibility of the fruits of the search in the present case differ as to defendant Sanders, who was not subject to a search condition, as compared to defendant McDaniel, who was?

#02-105 In re David S., S106284. (B136865; unpublished opinion.) Petition for review after the Court of Appeal affirmed in part and reversed in part an order in a wardship proceeding. The court ordered briefing deferred pending decision in People v. Garcia, S097765 (#01-94), which presents the following issue: Can an enhancement be imposed on an aider and abettor under Penal Code section 12022.53, subdivision (e), for the use of a firearm in a felony that the jury finds was committed for the benefit of a criminal street gang within the meaning of Penal Code section 186.22, subdivision (b), if the person who allegedly personally used the firearm was not convicted of the underlying felony?

#02-106 Jarrow Formulas, Inc. v. LaMarche, S106503. (B146708; 97 Cal.App.4th 1.) Petition for review after the Court of Appeal reversed an order in a civil action. The court ordered briefing deferred pending decision in Equilon v. Consumer Cause, S094877 (#01-36), Navellier v. Sletten, S095000 (#01-37), and City of Cotati v. Cashman, S099999 (#01-136), which present the following issue: Is a defendant seeking the dismissal of an action under the anti-SLAPP statute (Code Civ. Proc., § 425.16) required to show that the action was brought with the intent to chill the defendant's exercise of the constitutional rights of free speech or to petition the government for redress of grievances?

#02-107 In re Nicholas H., S106245. (A095267; unpublished opinion.) Petition for review after the Court of Appeal reversed orders in a dependency proceeding related to In re Nicholas H., S100490 (#01-150), opinion filed June 6, 2002, and raising the same questions at issue in that case: (1) Does the term "natural father" in Family Code section 7611 mean "biological father?" (2) Is an individual's status as a "presumed father" under Family Code section 7611 necessarily rebutted under Family Code section 7612 by the presumed father's admission he is not the child's biological father? The court ordered briefing deferred pending finality of In re Nicholas H., S100490, and until further order of the court.

DISPOSITIONS

#02-15 In re Samuel J., S102634, was dismissed and remanded to the Court of Appeal.

#01-108 Sherman v. Allstate Ins. Co., S099619, was dismissed and remanded to the Court of Appeal following notice of settlement of the action.

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